# UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 28

CABLE ONE, INC.1

**Employer** 

and

Case 28-RC-6288

COMMUNICATION WORKERS OF AMERICA, LOCAL 7019, AFL-CIO, CLC<sup>2</sup>

**Petitioner** 

#### DECISION AND DIRECTION OF ELECTION

The Communication Workers of America, Local 7019, AFL-CIO-CLC, (Petitioner) seeks to represent a unit of field technicians, senior field technicians, and advanced technicians (sometimes referred to collectively as "technicians") employed by Cable One, Inc. (Employer), at its Prescott, Arizona facility. The Employer contends that the unit is inappropriate because it fails to include all of its associates working in all of its departments, including the General & Administrative Department, Marketing Department, and the Advertising Sales Department. In addition, the Employer contends that the Prescott employees operate in a regional unit along with employees located in Cottonwood, Arizona, and that employees in Cottonwood must be included in the petitioned-for unit. Accordingly, the Employer asserts that the unit should consist of all of its associates working in both the Prescott and Cottonwood offices. There is no history of collective bargaining involving the employees at these facilities.

Based more fully on the reasons set forth below, I find the record demonstrates that the technicians constitute a separate and distinct appropriate unit based on their distinct duties, and that they are separately supervised, are administratively organized in separate departments, have specific technical experience, training and tools. However, I find that the operations of the petitioned-for unit of technicians employed at the Prescott facility has been effectively integrated into the operations associated with the Cottonwood technicians. Accordingly, the unit appropriate for collective bargaining is a unit of field technicians, senior field technicians, and advanced technicians working at both the Prescott and Cottonwood offices.

<sup>&</sup>lt;sup>1</sup> The name of the Employer appears as corrected at the hearing.

<sup>&</sup>lt;sup>2</sup> The name of the Petitioner appears as corrected at the hearing.

#### **DECISION**

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

- 1. **Hearing and Procedures:** The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.
- 2. **Jurisdiction:** The parties stipulated that the Employer, a Delaware corporation, with an office and place of business located in Phoenix Arizona, and a facility located at 3201 Tower Road, Prescott, Arizona, is engaged in the business of selling and servicing broadband products. During the 12-month period ending June 25, 2004, the Employer, in conducting its business operations described above, derived gross revenues in excess of \$100,000, and during this same period, purchased and received goods valued in excess of \$50,000 at its facilities located in Phoenix and Prescott, Arizona, from points located outside the State of Arizona. The Employer is engaged in commerce within the meaning of the Act, and, therefore, the Board's asserting jurisdiction in this matter will accomplish the purposes of the Act.
- 3. **Claim of Representation:** The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
- 4. **Statutory Question:** A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
- 5. **Unit Finding:** The Petitioner seeks to represent a unit of field technicians, senior field technicians, and advanced technicians employed by the Employer at its Prescott, Arizona facility. The Employer contends that the petitioned-for unit is inappropriate and should include the technicians in both Prescott and Cottonwood, Arizona, along with the following positions in both cities: customer sales and service representatives (CSSRs), senior customer sales and service representatives, dispatcher, marketing assistant, direct sales representative, advertising account executive, advertising sales assistant, creative director, producer, production technician-advertising, and traffic coordinator.<sup>3</sup>

## A. The Employer's Operations

The Employer, a division of The Washington Post Company, provides cable television and associated broadband services, such as high-speed internet access, to residential and business customers in 19 states, focusing on small to medium size markets. The Employer is headquartered in Phoenix, Arizona, and has four operating divisions: the Northwest Division,

2

<sup>&</sup>lt;sup>3</sup> At the hearing, the parties stipulated, and I find, that the individuals holding the positions of lead technician and lead customer sales and service representative are supervisors under the Act. The parties also stipulated, and I find, based on the record before me, that Advanced Technician Mike Heddens is not a supervisor under the Act.

the Central Division, the Southwest Division, and the Southeast Division, corresponding with the various states in which the Employer provides services.

A Vice-President of Operations, who reports directly to the President of the company, administers each division. Julie Laulis is the Vice-President of Operations for the Southwest Division, which covers Arizona, New Mexico, and parts of Texas. Within the Southwest Division, there are nine system groups, each headed by a General Manager. The Prescott and Cottonwood offices comprise one system group, headed by General Manager Dennis Edwards. Edwards reports directly to Laulis.

## **B.** The Prescott-Cottonwood System Operations

In 2001, the Prescott and Cottonwood offices constituted separate system groups, each with its own general manager. However, by January 2002, they were integrated, and Edwards became the general manager for both offices. Edwards and the other managers spend a portion of their workweek at each of the two facilities.

The Prescott and Cottonwood systems share tools, resources, and a single budget, and a unified profit/loss statement. The Prescott and Cottonwood offices are approximately 30 miles apart. The cable television system is run from equipment known as a "head-end" that gathers the various broadcast signals from satellites, processes the signals, and transmits the programming through the cable system to its customers. The Prescott and Cottonwood facilities maintain separate head-ends for each city, designed to run independently. Near each head-end is equipment used by the advertising department to process and insert various local television commercial advertisements into the programming.

The Prescott-Cottonwood system covers Yavapai County, with the Prescott head-end sending its signals to customers in the City of Prescott, and Towns of Chino Valley, Prescott Valley, Humbolt, Dewey, and Mayer, and the Yavapai-Prescott Indian Reservation. The Cottonwood head-end sends its signals to customers in the City of Cottonwood, and Towns of Clarkdale and Cornville. Since the head-ends are separate, the Employer could theoretically divest itself of either the Cottonwood or Prescott facilities, without affecting the other office's delivery system.

The Prescott office is the larger of the two offices. Prescott employs five senior customer sales and service representatives (Senior CSSRs); six customer sales and service representatives (CSSRs); two dispatchers; one marketing assistant, three direct sales representatives (DSRs); four advertising account executives; one advertising sales assistant; one creative director; two producers; one advertising production technician; and one traffic coordinator. In addition, it employs 26 field, senior, and advanced technicians who are the object of the petition. The Cottonwood office employs two field technicians, one senior field technician, one DSR, and one CSSR.

There are different departments within the Prescott-Cottonwood system, each with its own supervising manager. These include the Technical Department, where the petitioned-for technicians work; the General & Administrative Department, where the CSSRs, Senior

CSSRs and dispatchers work; the Marketing Department, where the marketing assistant and DSRs work; and the Advertising Sales Department, where the traffic coordinator, producers, advertising production technician, and the advertising account executives work. Although there is one overall budget for the Prescott-Cottonwood system, each department has its own separate budget as well as separate levels of supervision.

The Technical Department is managed by John Williams, Technical Operations Manager, who is based in Prescott, but oversees both the Prescott and Cottonwood technicians. Williams reports to General Manager Edwards.

Office Manager Margarie Kelleher manages the General & Administrative Department for Prescott, and Office Manager Mindy Gray manages the same department for Cottonwood. Both Gray and Kelleher report to Edwards. Rick Street, Regional Advertising Manager, oversees the Advertising Sales Department. Along with the Prescott-Cottonwood system, Street also supervises the entire Arizona region and reports to Ron Pancratz, Vice-President of Advertising Sales. Manager Tammy Moore oversees the marketing department at both the Prescott and Cottonwood facilities.

Prescott-Cottonwood employees receive the same fringe benefits, are paid on a biweekly basis and fill out similar forms such as leave forms, etc. There is a common drug testing and physical examination policy. Prescott-Cottonwood employees are permitted to bid on job openings at either facility.

Prescott-Cottonwood associates are encouraged to participate in community events, such as the Salvation Army holiday bell ringing, and Employer-sponsored events such as rodeos, company parties, and picnics. Additionally, all associates receive training about the services the Employer provides to its customers, and can explain the Employer's services to potential customers. The Employer encourages all associates, regardless of job function, to attempt to sell the Employer's products, and offers commissions to anyone able to facilitate a sale or customer upgrade. If technicians sell an upgrade, they are paid a commission at twice the normal rate, because the Employer believes it is harder to sell an upgrade to a customer who has already placed an order. Notwithstanding these incentives, CSSRs produce 90 percent of the Employer's orders.

The Employer provides all employees an incentive to retrieve unreturned Employer equipment from customers. Following the cancellation or disconnect of a customer's cable service, customers often fail to return their digital consumer terminals (DCTs), the digital settop receivers used to access programming. The marketing department distributes a list of unreturned DCTs to its various departments and permits any associate to supplement their income by retrieving delinquent DCTs. DCT retrievals are done both during and after business hours. Employees who retrieve DCTs log their hours and receive either overtime or a commission, whichever is greater.

#### C. Job Duties

## 1. Field, Senior, and Advanced Technicians

All technicians, including field, senior, and advanced technicians, are supervised by John Williams, the Technical Operations Manager. Because the Prescott Office is open half a day Saturdays, the five managerial employees in Prescott office take turns working every fifth Saturday. The Manager on site each Saturday is the acting manager for all employees working that particular Saturday. Under Williams is one Technical Field Supervisor in Prescott, a position which was open at the time of hearing, and one in Cottonwood. The technicians perform installations, service, and repair of the Employer's cable system. They use a variety of tools to complete their tasks including wrenches, screwdrivers, hammers, drills, signal level meters, ladders, and an Employer-provided truck with a lift and bucket on the back, sometimes referred to in the industry as a cherry-picker, or bucket truck. All technicians drive bucket trucks to their regular service assignments as well as to aerial installation assignments.

The Employer prepares an installation and service schedule for technicians at the beginning of each workday. Dispatchers print the service calls and distribute them on a "green bar" where technicians retrieve them each morning. Though each technician is given a route assignment each morning, that route may be modified based on an urgent customer request or some other compelling need.

Technicians wear a specific and distinct uniform, consisting of an Employer-issued blue stripe shirt, cotton pants, belt, hard-hat and boots. The technician schedule runs from 8:00 a.m. to 5:00 p.m., Monday through Friday, with some of the Prescott technicians working Tuesday through Saturday. They work limited overtime, amounting to about five percent of their salary base. Technicians are generally at the Employer's facility only at the start and end of each business day. Break and lunches are routinely taken while they are in the field. At all times, at least one technician is in "on-call" status, where they are available for after-hours service.

As there is no warehouse in Cottonwood, the entire parts inventory for both facilities is based in Prescott. Accordingly, a Cottonwood employee travels to Prescott to obtain inventory, or the inventory is delivered to Cottonwood. Also, at least once a month, or as needed, Prescott technicians will go to Cottonwood for various projects. Moreover, Prescott-based technicians perform all construction work for Cottonwood, and Prescott technicians substitute for absent Cottonwood technicians. At least one advanced technician travels to Cottonwood monthly to meet with developers and coordinate new construction. If a Cottonwood technician cannot locate the Cottonwood Technical Field Supervisor, they contact Technical Operations Manager Williams. Moreover, Williams decides when, and if, a Cottonwood technician is to be dispatched to Prescott.

Two employees have transferred from other positions to that of field technician. One, Max Olive, worked in the marketing department as an auditor. His job was eliminated, and he

was offered a position as a field technician. The other, Rick Langlais, transferred from DSR to field technician.

Specific duties of a field technician: Field Technicians perform commercial and residential installations, complete repairs, terminate service, and relocate existing equipment. They also use electronic equipment to troubleshoot and diagnose problems and complete network repairs. Field Technicians educate customers as to the proper operation of all services including equipment and home units, and are responsible for marking, also known as "blue-staking," the locations of Employer underground cable lines.

Field technicians must complete the Employer's field technician training course during the first nine months of their employment. For an entry-level technician position, the Employer will provide all the training needed to learn the job. Technicians must be able to operate a bucket truck, complete aerial installations, and perform trouble-shooting and repair work after hours, on a stand-by basis. All installations must comply with the specifications of the National Electric Code, the National Electrical Safety Code, and the Employer's guidelines.

Field technicians are paid commissions if they initiate the sale of new cable services, upgrades, or additional outlets to customers, but their primary job function is installation and repair, not sales. Technicians are not trained to enter sales information into the Employer's ("Cable Data") order-taking system. Wage rates for field technicians range from \$8.87 to \$14.00 per hour, based on experience level.

Specific Duties of a Senior Field Technician: The Employer designates a certain number of technicians as Senior Field Technician positions. As with all promotions, technicians are required to complete an extra course of training to be certified as Senior Field Technicians. Along with performing all of the essential duties and responsibilities of the field technician, senior technicians are also called upon to use electronic test equipment to troubleshoot service drops, diagnose problems, perform network repairs, and perform construction and reconstruction projects on the physical cable plant and equipment. Wage rates for senior technicians run from \$10.50 to \$17.00 per hour, based on experience level. There has to be an opening available to move up from field technician, to senior field technician, to advanced technician.

Specific Duties of Advanced Technician. The Employer designates a certain number of Advanced Technician positions. Within six months of accepting such a position, the technician must complete the Employer's advanced technician training. Along with performing all of the duties and responsibilities of the field technician and senior technician, advanced technicians must be able to troubleshoot and diagnose more sophisticated equipment malfunctions, such as those involving the head-end. Advanced technicians spend about 60 percent of their time doing maintenance work on the Employer's systems and 40 percent of their time performing other repairs, installations, and construction. Wage rates for Advanced Technicians run from \$12.00 to \$20.00 per hour, based on experience level.

#### 2. CSSRs and Senior CSSRs

CSSRs and Senior CSSRs (collectively referred to as CSSRs) answer the telephones and primarily book customer installation requests and answer customer questions. Ninety percent of the Employer's installation requests come through the CSSRs. During the first six months of employment, a CSSR will spend one day in the field with a technician, to observe the other aspects of the Employer's services.

The Prescott CSSRs and Senior CSSRs are supervised by Prescott Office Manager Margerie Kelleher. The one Cottonwood CSSR reports to Cottonwood Office Manager Mindy Gray. Both office managers, in turn, report to Prescott General Manager Dennis Edwards.

Customers, seeking to purchase cable service, telephone the Employer and speak to a CSSR who takes the call and inputs the information into the Employer's Cable Data computer system. That information is used by dispatchers who assign various installation projects to available field technicians. CSSRs generally answer the customers' questions, using their knowledge and troubleshooting skills. In the event that a customer poses a question that is beyond the knowledge of a CSSR, the call is placed into a pool where it is routed by a dispatcher to a technician. Dispatchers assign these calls to technicians based on location and urgency.

Everyday interaction between CSSRs and technicians is limited as CSSR questions are routed through dispatchers. Nothing prevents a CSSR from approaching a technician who happens to be in the office and posing a technical question, but that is not the usual protocol. In the rare event of an emergency, such as an outage in a particular area, CSSRs can send the dispatchers a "flash" through an alert screen in the Cable Data computer system. CSSRs also perform various data entry and clerical duties such as filing, payment entry, and processing customer correspondence. One CSSR also maintains the "blue-stake" records.

Prescott CSSRs are located at computer terminals with telephones and calculators. They answer their phones in the front office area of the main building, near the dispatchers. One CSSR makes "jumpers," short pieces of cable with fittings on the ends, to issue to customers who walk into the facility requesting these cables. Since there is only one CSSR in Cottonwood, Prescott CSSRs cover absences in the Cottonwood office due to vacations or illness.

CSSRs, unlike the technicians, are not required to wear a uniform. However, the Employer utilizes a dress code that requires the wearing of a combination of red, white, or blue slacks, shirt, or blouse. At times they may wear a company polo shirt. Wage rates for CSSRs range from \$8.25 per hour to about \$15.00 per hour. All CSSRs in Prescott work from 8:30 a.m. to 5:30 p.m., Monday through Friday, except Wednesday when the Prescott facility closes at 4:30 p.m. Prescott CSSRs also work on Saturday from about 8:00 a.m. until noon. The Cottonwood office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday. CSSRs occasionally work overtime, amounting to less than three percent of their base salary.

Along with performing all the duties and responsibilities of the regular CSSR, a Senior CSSR is expected to work with a minimal level of supervision and guidance, and is called upon to train new associates. Wage rates for Senior CSSRs range from \$8.50 to \$18.00 per hour, based on experience level.

## 3. Dispatchers

Both dispatchers work out of the Prescott facility. They serve as the link between the technicians in the field and the CSSRs in the front office. Additionally, they monitor service calls and denote on a calendar the installations scheduled for each day. A technician may be in radio contact with a dispatcher 15 or more times per day. The Field Technical Supervisor in Cottonwood handles the dispatch functions for the Cottonwood office. He identifies technicians available to handle the various issues arising in that office.

One dispatcher handles installations, while the other works with the advanced technicians on service matters. When a customer notifies a CSSR of a problem with their cable equipment, the CSSR generally transfers the call to the dispatcher. The dispatcher assigns a technician to respond to the call, primarily on the basis of technician location. Upon completion of a job, technicians radio their location to a dispatcher and otherwise maintain contact with the dispatcher by radio or cell phone.

Dispatchers use the Employer's Cable Data system to call up installation assignments to be performed each day. They coordinate the assignments with Jason Fonseca, a senior field technician, to ensure that the work is properly routed to available technicians. Dispatchers take into account the Employer's "same day" service goal whereby the Employer tries to complete customer installations on the same day the service is ordered, provided the customer places the order before 2:00p.m.

Dispatchers, like CSSRs, do not wear uniforms but are instead subject to the same color scheme dress code as CSSRs. They receive the same training as CSSRs and spend 95 percent of their time at the Employer's facility. Though dispatcher duties are different from those of the CSSRs, the Employer classifies dispatchers as CSSRs and CSSRs substitute for absent dispatchers. One of the current dispatchers previously worked as a CSSR, and a CSSR currently is classified as a backup dispatcher. Dispatchers and CSSRs are supervised by Office Manager Margarie Kelleher.

Dispatchers work in the office and not the field. However, during the initial training period, a dispatcher will on one day ride along with a technician to acquire an understanding of field operations. One dispatcher works from 8:00 a.m. to 5:00 p.m., Monday through Friday, while the other works the same hours Tuesday through Saturday. The tools used for their position include computers, calculators, telephones, cellular phones and two-way radios. Dispatchers infrequently work overtime that does not exceed about one to two percent of their base wages. Wage rates for dispatchers range from \$8.50 to \$16.00 per hour, based on experience level.

## 4. Direct Sales Representatives

There are three direct sales representatives (DSRs), one in Cottonwood and two in Prescott. DSRs sell cable services by door-to-door, cold-call selling. They are required to maintain a minimum contact rate of 60 percent of non-subscribing homes in the Employer's database. They are paid a base salary of \$12,000, plus a sales-based commission, and are not paid overtime. They work Tuesday through Saturday, from 11:00 a.m. until 7:00 p.m., and drive personal vehicles to their various sales calls. DSRs spend about two hours per day in the office and the rest of the day in the field making sales calls.

During each door-to-door visit, DSRs are asked to visually confirm whether the non-subscribing home is disconnected or whether it has illegally connected to the Employer's cable system. To assist DSRs in this task, they carry a "sniffer" that they attach to a cable line to detect any illegal connection.

After a sale is made, one of the DSRs in Prescott may perform her own basic connections, but this occurs only when the location has previously been installed for cable and the outlets are exactly where the customer wants them. Anything else, like a new installation, change of outlets, or anything requiring an aerial connection, requires the services of a field technician. To assist her in this task, she carries a "crimper," which is a tool to crimp the cable fitting so it can fit into the cable line, and a terminator tool to remove the terminating device from a cable line. DSRs do not carry ladders or use ladders. All of the DSRs are trained to disconnect DCTs and modems from a wall if a customer wants to return them.

DSRs do not wear a uniform, but wear khaki pants, either brown or blue, and a polo shirt with the Employer's insignia. Regarding tools relied upon by DSRs to complete their tasks, along with the sniffer, DSRs carry Nextel cellular phones, a calculator, and are trained on Cable Data program to enter orders and access customer accounts. While they are not assigned a computer, one is always available for use when they are in the office. DSRs are considered part of the marketing department and report directly to Marketing Manager Tammy Moore. Every Tuesday all the DSRs attend a joint meeting held by Moore.

#### 5. Marketing Assistant

The Employer employs one marketing assistant, who works in Prescott. The marketing assistant works in the marketing department along with the DSRs and reports to Marketing Manager Moore. As the DSRs receive orders, they contact the marketing assistant who inputs the information into the computer, scheduling installation dates. If the marketing assistant is unavailable, the DSRs contact dispatchers who input the information and schedule installation dates. The marketing assistant also assists in pulling various reports on an asneeded basis for the different departments. The marketing assistant is also responsible for compiling the list of DCTs for the employees participating in the DCT collection program. Generally, the technicians do not interact with the marketing assistant, unless they are participating in the DCT program or to respond to an occasional question.

The marketing assistant works in the main building with the CSSRs and does not wear a uniform. She spends 95 percent of her time in the office and primarily uses a computer, printer, copier, postage machine, and fax machine to complete her tasks. When inputting orders, the marketing assistant uses the same Cable Data computer program used by the CSSRs. Her work week runs from Monday through Friday, and she is paid an hourly wage that can range from \$8.50 to \$17 per hour, based on level of experience. The marketing assistant works occasional overtime, limited to about one to two percent of her base salary.

## **6.** Advertising Account Executives

There are four advertising account executives (AAEs), and they report directly to Regional Advertising Manager Rick Street. AAEs occupy cubicles in the Prescott advertising office across the street from the Employer's main building. AAEs are responsible for selling cable advertising to local businesses in both Prescott and Cottonwood, but from time to time they schedule and coordinate commercial production, and ensure commercials are inserted on the correct channel. During sales calls they attempt to upgrade services to existing customers and generate new business by preparing a list of prospects.

AAEs do not wear a uniform and have no dress requirement. To perform their tasks, they primarily use a day planner, computer, cell phone, and pager. AAEs work six days a week and do not receive overtime. They are paid a base-salary of \$15,000 with the majority of their salary coming in the form of commissions. AAEs are not paid overtime, work off premises most of the day, and drive privately-owned vehicles during sales calls. AAEs potentially interact with technicians no more than once each day, at a group meeting or if an AAE collects mail at the main building.

## 7. Advertising Sales Assistant

There is one advertising sales assistant (ASA), who also reports to Regional Advertising Manager Street. The advertising sales assistant is stationed in a cubicle in the advertising department and is required to have excellent computer skills. The ASA prepares sales presentations as directed by the account executives and the sales manager, answers incoming calls, assists in general filing, maintains media kits, types assignments, delivers and ships materials, prepares research and sales information, and greets and directs visitors as needed. The ASA does not wear a uniform, but like the CSSRs and dispatchers, wears a combination of red, blue, and white. The ASA is paid around \$12.00 per hour, has no interaction with the technicians, and generally does not work overtime.

#### 8. Creative Director

The creative director works in the advertising sales department. She assists the production manager in scheduling and coordinating production work and also mentors the producers and production assistants. She is responsible for producing, directing, scripting, videographing and editing commercial advertisements, while upholding quality standards.

The creative director makes sure that proper equipment is available, visits production sites, sets up cameras, and ensures proper lighting, video and audio conditions. She also shoots the commercials, digitizes the footage, and performs editing for the finished product that will be inserted into the network programming. The creative director must be knowledgeable in all facets of production, including production of ads and commercial insertion, and proper maintenance of equipment.

The creative director works from 8:00 a.m. to 5:00 p.m., five days a week, with occasional weekend work. Throughout the workday, the creative director has seldom, if any, contact with the technicians. She spends 80 percent of her day in the office and the remaining 20 percent in the field. This is a salaried position exempt from overtime.

#### 9. Producers

Two producers work in the Advertising Sales Department and are responsible for creating, producing, and airing commercial advertisements. Producers direct, script, videograph, and edit commercial advertisements, whether these ads are in the form of video, stills, graphics, animation, or audio. They insert ads into the Employer's transmission system, and assist in providing proper equipment maintenance. To perform their functions, producers use video cameras and computer programs to edit commercials.

Producers do not wear a uniform and generally do not interact with technicians. However, some technicians have been featured in some of the Employer's commercials and, when used as actors, there is interaction between technicians and producers. Producers work in the advertising building across the street from the main building, with the other advertising staff, and also work at times on the head-end. Producers report to Regional Production Manager Ken Duncan who, in turn, reports to Regional Advertising Manager Rick Street. Producers fill in for the production technician when he is unavailable.

Wage rates for producers range from \$12.00 to \$14.00 per hour, based on experience level. They work about two to five hours per week of overtime, limited to between 5 and 12.5 percent of their overall yearly hours.

## 10. Advertising Production Technician

The advertising production technician, Anton Cole, is stationed in the Prescott advertising department, and reports to Regional Advertising Manager Duncan. Cole maintains advertising insertion equipment in the head-end that inserts commercials into network programming. Commercial spots are loaded onto computer hard-drives in the head-end, and Cole maintains those hard-drives. He also watches for cue tones, which are signals sent by the satellite network to cue the start up of commercial spots. He ensures that a commercial's audio and video levels are correct, and properly blend with the network product to ensure seamless transition to the commercial breaks.

Cole also maintains the photo and video equipment, the advertising sales computers, and networking equipment. Cole diagnoses and resolves hardware/software issues over the

telephone and on-site, installs audio, video, and computer network cabling, edits commercial reels, encodes tapes for digital spot playback, and assists in maintaining the tape libraries. Good computer skills are essential for this position, and Cole is required to have hands-on experience with Windows 95/98/NT, Macintosh OS, personal computers, and networking equipment.

Cole occasionally works outside to assist in filming commercials. Producers, in turn, fill in for Cole during absences and assist Cole with head-end problems. On occasion, Cole may cross paths with a technician working inside a head-end. Cole may have to troubleshoot with an advanced technician if a commercial does not insert properly into the programming beamed from the satellite. For example, Cole may contact a technician if he encounters a problem with the receiver, modulator, or wiring in the head-end.

Cole does not wear a uniform, is paid around \$11.00 to \$12.00 per hour, and works from 8:00 a.m. to 5:00 p.m., Monday through Friday. He is on call, by pager, after hours. He works about four to six hours of overtime per month, equal to between two to three percent of his overall yearly hours worked.

#### 11. Traffic Coordinator

The traffic coordinator works in the Advertising Department and reports to Regional Production Manager Duncan. The traffic coordinator schedules the placement of commercials into and around the various programming offered on the Employer's system. She also performs order entry, coordinates between the sales and production staff for timely arrival of ad copy, maintains network programming and inventory reports, researches payment information, prepares deposits, researches reasons for missed ads, generates various month end reports, produces trade and expense account records, computes charge backs and pay backs on account executive commissions, reconciles petty cash and payments to deposits, monitors orders to insure they fulfill contracted requirements, and checks daily that commercials are airing as scheduled.

The traffic coordinator does not wear a uniform, and primarily uses a personal computer to perform her duties. The current traffic coordinator worked as a CSSR before she transferred to the Advertising Department into her current position. She is paid around \$11.00 or \$12.00 per hour, works from 8:00 a.m. to 5:00 p.m., Monday through Friday, and rarely works overtime. In performing her duties, the traffic coordinator has minimal, if any, contact with the technicians.

## D. Legal Analysis and Determination

It is a longstanding rule that the Act does not require the bargaining unit approved by the Board be the only appropriate unit, or even the most appropriate unit; it is only required that the unit be *an* appropriate unit. *Executive Resources Associates*, 301 NLRB 400, 401 (1991). Therefore, a "union might seek to represent all of the employees in a particular plant, those in a particular craft, or just a portion thereof." *American Hosp. Ass'n. v. NLRB*, 499 US 606, 610 (1991).

The Board's procedure for determining an appropriate unit under Section 9(b) is to examine the petitioned-for unit first. *Bartlett Collins Co.*, 334 NLRB 484 (2001). If that unit is appropriate, the inquiry into the appropriate unit ends. Id. If the petitioned-for unit is inappropriate, the Board may examine the alternative units suggested by the parties, but also has the discretion to select an appropriate unit different from the alternative unit proposals of the parties. Id. The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. Id.

When a petitioning labor organization seeks an election at a single facility, the single facility unit is considered presumptively appropriate for the purposes of collective bargaining. *Red Lobster*, 300 NLRB 908, 910 (1990). However, this presumption may be overcome "by a showing of functional integration so substantial as to negate the separate identity of the single facility unit." Id. In making this determination, the Board looks to such factors as "prior bargaining history, the geographical proximity to other facilities of the same employer, the degree of day-to-day managerial responsibility exercised by the branch facility management, the frequency of employee interchange, and whether the requested single facility constitutes a homogeneous, identifiable, and distinct employee grouping." Id.

Applying these factors to the facts in this case, I find that the petitioned-for employee classifications of field technician, senior field technician, and advanced technician is appropriate. I further find that the single-facility presumption has been rebutted and that the Prescott and Cottonwood operations are functionally integrated, compelling the inclusion in the unit of the technicians at both facilities.

## 1. Technicians share a distinct community of interest.

In determining whether the employees in the unit sought possess a separate community of interest, "the Board examines such factors as mutuality of interest in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration." *The Boeing Company*, 337 NLRB 152 (2001) (citations omitted). Applying these factors, I find that the technicians possess a separate community of interest in relation to other job classifications the Employer seeks to include in the unit. In reaching this conclusion, I have taken into account various considerations.

First, the technicians are administratively organized in the Technical Department and are supervised separately from the other classifications the Employer seeks to include. The technicians are supervised at the field level by the two Technical Field Supervisors, and on the operational level by Williams, the Technical Operations Manager. In contrast, the CSSRs and dispatchers are organized in the General & Administrative Department, and are supervised on the operational level by the two Office Managers. The traffic coordinator, producers, creative director, advertising production technician, and advertising account executives are organized in the Advertising Sales Department, and are supervised on the operational level by the Regional Advertising Sales Manager. The marketing assistant and

the DSRs are organized in the Marketing Department, and are supervised on the operational level by the Marketing Manager.

Second, there is little commonality among wage rates between the technicians and the other classifications the Employer wants to include in the unit. Technicians are hourly employees paid anywhere from \$8.87 per hour for an inexperienced field technician to \$20.00 per hour for an experienced advanced technician. While the technicians are eligible to receive a commission if they generate a sale or upgrade while in the field, or retrieve a DCT, these commissions do not account for anything but a minimal portion of their income, unlike the DSRs and AAEs whose major source of income comes from commissions. DSRs or AAEs, who are primarily sales people, are paid a base salary plus commission. The creative director is a salaried employee. Of the other employees, technicians can reach a maximum hourly rate of \$20.00 per hour. This is \$2.00 per hour more than the CSSRs; \$4.00 more per hour than the dispatchers; \$3.00 more per hour than the marketing assistant; \$6.00 more per hour than the producers; \$8.00 more per hour than the advertising production technician; and \$8.00 more per hour than the traffic coordinator. Moreover, the technicians receive up to five percent of their base salary in overtime. Only the producers, who get from 5 to 12 percent of their hours in overtime, reach this level. The next closest classification that receives overtime are the CSSRs with less than three percent of their salary derived from overtime. Finally, at least one technician is always on call. The only other employee that is on call is the advertising production technician.

Third, the working conditions and skills of the technicians are distinct from those of the other classifications the Employer wants to include in the unit. The technicians have special training and skills in installing, servicing, and repairing the Employer's cable system. They alone use ladders and the bucket truck to perform aerial installations and repairs, and perform construction and reconstruction projects on the Employer's physical cable plant and equipment. Their training is unique to their classifications. Technicians alone wear distinct uniforms, hard-hats, and safety boots. The working function and skills of the other employees are in contrast to those of the technicians with the DSRs serving as door-to-door salespersons, and even though one DSR performs rudimentary connections, she only does so when it requires little or no technical training and never if it requires any type of aerial connection; the marketing assistant is basically a clerical employee, who schedules and inputs the DSRs' orders and compiles the list of DCTs; the AAEs sell advertising to local business and are assisted by the advertising sales assistant, who prepares sales presentations for the AAEs; with the creative director or producers, who direct and script television commercials; or with the traffic coordinator, who schedules the placement of the television commercials.

The Employer asserts in it post-hearing brief that, even if the entire Advertising Sales Department does not share a community of interest with the technicians, at a minimum the producers and advertising production technicians should be included in the unit because of their high level of interaction and coordination with the technicians who work in the headend. I find this argument unpersuasive. While producers fill in for Cole, the advertising production technician, or help with problems in the head-end, the primary function of the producers is to direct, script, tape and edit television commercial advertisements and insert them into the programming. Occasional interactions with technicians, while they serve as

actors in the Employer's commercials or while they happen to be in the head-end, are insufficient to mandate their inclusion in the bargaining unit.

Similarly, Cole's primary duties are to maintain the advertising insertion equipment, which are the computer hard drives that the television commercials are loaded onto, to make sure the commercials cue-up at the proper times, and to ensure the commercials audio and video levels are correct and properly blend with the network shows. There is no evidence that Cole is familiar with cable installation or service, can perform these functions either aerial or otherwise, can operate a bucket truck, or works on the Employer's construction projects. Instead, Cole's position requires knowledge of various computer operating systems such as Macintosh OS and Windows. While Cole contacts technicians if there is a problem with a receiver, modulator, with the wiring in the head-end, or may trouble shoot with advanced technicians if a commercial does not insert properly into the network programming, these interactions were described by his boss, Regional Advertising Sales Manager Street, as "crossing their paths." Crossing paths with the technicians in the head-end is hardly the type of interaction and coordination requiring Cole's inclusion in a unit of technicians. Moreover, unlike the technicians, Cole does not wear a uniform, is paid significantly less than the advanced technicians who work on head-ends, and spends the majority of his workday inside, unless he is working with the producers outside on a television commercial.

As to the duties and functions of the CSSRs and dispatchers, I find that the record here is strikingly similar to that in *Harron Communications, Inc.*, 308 NLRB 62 (1992), involving a petitioned-for unit of installers and technicians. The employer asserted that the unit had to include their customer service representatives. The *Harron Communications* customer service representatives performed combined duties that the CSSRs and dispatchers perform in the record before me. In denying review, the Board noted that, although the customer service representatives "have considerable daily contact with the installers and the technicians," they performed distinct duties from those of the installers and technicians, were separately supervised, administratively organized in a separate department, did not work in the field with tools or on any cable equipment, and were required to have experience using computers and telephones. Id. These same factors are present here. CSSRs and dispatchers are separately supervised, are organized in separate administrative departments, do not work in the field with tools or any cable equipment, and must have experience using the telephone and computers. On the strength of the holding in *Harron Communications*, I find their inclusion in a unit of technicians is not required.

Finally, none of the other administrative departments is so functionally integrated with the Technical Department that they wholly rely upon the Technical Department to function. The sales people and their support staff in the Marketing Department can function without the assistance of the Technical Department. Similarly the television producers, sale people, and the advertising technician do not singularly rely upon the Technical Department to carry out their duties. As noted above, the CSSRs and dispatchers fall under the Board's reasoning in *Harron Communications* to negate their inclusion in a technicians unit.

The Employer cites *ACL Corp. d/b/a Atlanta Hilton and Towers*, 273 NLRB 87 (1984), to support its assertion that the only appropriate unit is, in essence, a wall-to-wall unit

of its Prescott and Cottonwood employees. However, *Atlanta Hilton and Towers* is distinguishable from the situation presented here. First, *Atlanta Hilton and Towers* involved employees at a hotel where there was significantly greater contact and interchange among the various employees than there is here. For example, there is no contact or interchange at all between the technicians and the traffic coordinator or the advertising account executives. Also, in *Atlanta Hilton and Towers*, the general manager was involved in even minor decisions throughout the hotel. There is no such evidence here. In addition, in *Atlanta Hilton and Towers* the Board noted substantial overlapping job duties and employee transfers. The record before me establishes limited transfers and little overlapping duties between the technicians and the other employees. Moreover, in *Atlanta Hilton and Towers*, unlike here, the petitioning union sought two separate units of employees, which were found appropriate by the Regional Director, even though some employees in each unit shared a stronger community of interest with employees in the other unit. Such is not the case here, where the Petitioner seeks one unit of technical employees.

The Employer also cites *Space Mark Inc.*, 325 NLRB 1140 (1998), in support of its argument. *Space Mark* was not a pre-election unit determination but involved a post-election hearing on the challenge to the ballot of a lineman, where the petitioning union had sought a unit of production power plant employees. The issue presented in *Space Mark* was whether the lineman shared a sufficient community of interest with production power plant employees to warrant his inclusion in the bargaining unit. Id. at n.1. All employees in question were engaged in the production and distribution of power from the power plant, ate breakfast together in the same cafeteria, and resided in single-family residences on a United States Naval Base in the Aleutian Islands. Id. at 1140-41. The Board applied a community of interest test to find the lineman belonged in the unit, especially since another high voltage electrician had been included in the bargaining unit and apparently voted unchallenged. The Board found that the other electrician's inclusion in the bargaining unit supported the hearing officer's finding that the lineman shared a community of interest with unit employees. None of these factors are present in the case before me. Rather, I find that the Board's holding in *Harron Communications, Inc.*, supra, is more closely aligned to the facts presented here.

The Employer cites two additional cases that do not involve utilities or cable companies to support its argument. In *Sears, Roebuck & Co.*, 191 NLRB 398 (1971), two different unions sought three different units. One union sought a unit of four different job classifications, and another union sought a unit of three different classifications. Here, the Petitioner seeks a single unit of the Employer's technicians. Similarly distinguishable is the Employer's argument that CSSRs must be included based upon the Board's holding in *National Telephone Company, Inc.*, 219 NLRB 634 (1975). There, two different unions sought to represent three different units. One union sought two separate units at two separate branches, and another union sought a 12-branch unit. Obviously, this is distinguishable from what is before me.

Accordingly, I find that the senior customer sales and service representatives, customer sales and service representatives, dispatchers, marketing assistant, direct sales representatives, advertising account executives, advertising sales assistant, creative director, producers, advertising production technician, and traffic coordinator do not share a sufficient

community of interest to mandate their inclusion in the bargaining unit found appropriate herein.

# 2. Technicians at the Prescott and Cottonwood facilities should be included.

As stated above, a single facility unit is considered presumptively appropriate for the purposes of collective bargaining, but may be overcome by a showing of functional integration so substantial as to negate the presumption. *Red Lobster*, supra. In making this determination, the Board looks to such factors as "prior bargaining history, the geographical proximity to other facilities of the same employer, the degree of day-to-day managerial responsibility exercised by the branch facility management, the frequency of employee interchange, and whether the requested single facility constitutes a homogeneous, identifiable, and distinct employee grouping."

Applying these factors, I conclude that the single facility presumption has been overcome. First, the record evidence shows a centralized control of labor relations for both cities. The record indicates that Prescott General Manager Edwards controls labor relations for employees in both cities and attempts to spend a portion of his time each week in both offices. Moreover, the employees in Prescott and Cottonwood receive the same work-related memoranda and e-mails from the Employer. The offices have been integrated into a single system for labor relations and budgets, and the payroll system does not distinguish between the two offices. Technical Operations Manager Williams decides when, and if, Cottonwood technicians should be dispatched to Prescott, and oversees the operational matters in both cities.

The record shows that there is significant employee contact and interchange between the two operations. The Prescott technicians go to Cottonwood to work on various projects, perform construction work for Cottonwood, and fill in for absent Cottonwood technicians. One Prescott technician testified that he worked on a particular project in Cottonwood for an entire week and that he interacts with Cottonwood technicians at least once or twice a month. At least one advanced technician travels to Cottonwood monthly to meet with developers and coordinate new construction. Since there is no warehouse in Cottonwood and the entire inventory is based in Prescott, employees are required to travel to Prescott to pick up inventory or have it delivered to Cottonwood.

Finally, I note that both the Prescott and Cottonwood technicians share common pay and benefits, receive similar training, perform similar work regardless of location, and have identical skills, duties, and other terms and conditions of employment.

Given the foregoing, despite the 30-mile separation between the two offices, I am of the view that the Employer has sufficiently overcome the single facility presumption and that technicians at the Cottonwood facility should be included in the bargaining unit found appropriate herein. See, *Waste Management of Washington, Inc.*, 331 NLRB 309 (2000), where a single facility presumption was rebutted despite 42-mile geographical distance between locations and with minimal interchange.

In sum, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All full-time and regular part-time field technicians, senior field technicians, and advanced field technicians employed by the Employer out of its Prescott, Arizona and Cottonwood, Arizona facilities.

**EXCLUDED:** All other employees, including customer sales and service representatives, senior customer sales and service representatives, lead customer sales and service representatives, dispatchers, marketing assistants, direct sales representatives, advertising account executives, advertising sales assistants, creative directors, producers, advertising production technicians, traffic coordinators, the lead technician, and guards and supervisors as defined in the Act.

There are approximately 29 employees in the unit found appropriate. The Petitioner, in its brief has stated that it is willing to proceed to an election in the above-defined bargaining unit. Since the unit I am directing an election in is larger than the petitioned-for unit, comprised of about 29 employees instead of 26 employees, the showing of interest will need to be reexamined. If there is a deficiency, the Petitioner will be given ten days to provide the requisite showing of interest in the unit found appropriate herein.

#### **DIRECTION OF ELECTION**

I direct that an election by secret ballot be conducted in the above unit at a time and place that will be set forth in the notice of election, that will issue soon, subject to the Board's Rules and Regulations. The employees who are eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Also eligible are those in military services of the United States Government, but only if they appear in person at the polls. Employees in the unit are ineligible to vote if they have quit or been discharged for cause since the designated payroll period; if they engaged in a strike and have been discharged for cause since the strike began and have not been rehired or reinstated before the election date; and, if they have engaged in an economic strike which began more than 12 months before the election date and who have been permanently replaced. All

eligible employees shall vote whether or not they desire to be represented for collective-bargaining purposes by:

# COMMUNICATION WORKERS OF AMERICA, LOCAL 7019, AFL-CIO, CLC

#### LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues before they vote, all parties in the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, I am directing that within seven (7) days of the date of this Decision, the Employer file with the undersigned, two (2) copies of an election eligibility list containing the full names and addresses of all eligible voters, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). This list may initially be used by the undersigned in determining an adequate showing of interest. The undersigned shall make the list available to all parties to the election when I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established. In order to be timely filed, the undersigned must receive the list at the NLRB Region 28 Office, 2600 North Central Avenue, Suite 1800, Phoenix, Arizona, 85004, on or before August 10, 2004. No extension of time to file this list shall be granted except in extraordinary circumstances. The filing of a request for review shall not excuse the requirements to furnish this list.

# RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. The Board in Washington must receive this request by August 17, 2004. A copy of the request for review should also be served on the undersigned.

**DATED** at Phoenix, Arizona, this 3<sup>rd</sup> day of August 2004.

/s/Cornele A. Overstreet

Cornele A. Overstreet, Regional Director National Labor Relations Board – Region 28